



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0610; FRL-9081-01-R4]

Air Plan Approval; NC; NC BART Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a North Carolina State Implementation Plan (SIP) revision, submitted through a letter dated April 13, 2021, proposing changes to North Carolina's SIP-approved rule addressing best available retrofit technology (BART) for regional haze. EPA proposes to approve North Carolina's SIP revision because the changes are consistent with Clean Air Act (CAA or Act) requirements.

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0610, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached via telephone at (404) 562-9031 or electronic mail at notarianni.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regional Haze and Regional Haze SIPs

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particulate matter (PM_{2.5}) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form PM_{2.5} which impairs visibility by scattering and absorbing light. Visibility impairment (i.e., light scattering) reduces the clarity, color, and visible distance that one can see. PM_{2.5} can also cause serious health effects (including premature death, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms) and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I federal areas. Congress added section 169B to the CAA in 1990 to address regional haze issues, and EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR

51.308,¹ on July 1, 1999.² The RHR established a requirement to submit a regional haze SIP which applies to all 50 states, the District of Columbia, and the Virgin Islands.³

To address regional haze visibility impairment, the RHR established an iterative planning process that requires states in which Class I areas are located and states from which emissions may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area to periodically submit SIP revisions to address regional haze visibility impairment.⁴ Under the CAA, each SIP submission must contain “a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,” and the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility-impairing pollutants install and operate BART, as discussed further in Section I.B, below.⁵ States’ first regional haze SIPs were due by December 17, 2007, with subsequent SIP submissions containing revised long-term strategies originally due July 31, 2018, and every ten years thereafter.⁶

B. BART

1. Statutory and Regulatory Requirements

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2) of the CAA requires states to revise their SIPs to

¹ In addition to the generally applicable regional haze provisions at 40 CFR 51.308, EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are therefore not relevant here.

² See 64 FR 35714 (July 1, 1999). On January 10, 2017, EPA promulgated revisions to the RHR that apply for the second and subsequent implementation periods. See 82 FR 3078.

³ 40 CFR 51.300(b).

⁴ See 42 U.S.C. 7491(b)(2); 40 CFR 51.308(b) and (f); see also 64 FR 35768 (July 1, 1999). EPA established in the RHR that all states either have Class I areas within their borders or “contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area;” therefore, all states must submit regional haze SIPs. See 64 FR 35721. In addition to each of the 50 states, EPA also concluded that the Virgin Islands and District of Columbia contain a Class I area and/or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. See 40 CFR 51.300(b) and (d)(3).

⁵ See 42 U.S.C. 7491(b)(2)(A); 40 CFR 51.308(d) and (e).

⁶ See 40 CFR 51.308(b). The 2017 RHR revisions changed the second period SIP due date from July 31, 2018, to July 31, 2021, and maintained the existing schedules for the subsequent implementation periods. See 40 CFR 51.308(f).

contain such measures as may be necessary to make reasonable progress towards the national visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate “Best Available Retrofit Technology” as determined by the state. On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the “BART Guidelines”) to assist states in the BART evaluation process. Under the RHR and the BART Guidelines, the BART evaluation process consists of three steps: (1) An identification of all BART-eligible sources, (2) an assessment of whether the BART-eligible sources are subject to BART, and (3) a determination of the BART controls.⁷

States must conduct BART determinations for all “BART-eligible” sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area, or in the alternative, adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is generally encouraged, but not required, to follow the BART Guidelines in other aspects.⁸

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to

⁷ *See* 40 CFR 51.308(e); BART Guidelines at I.F.

⁸ For additional details regarding the three steps of the BART evaluation process, *see, e.g.*, 85 FR 47134, 47136-37 (August 4, 2020).

monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a)(2).

States undertook the BART determination process during the first implementation period. The BART requirement was a one-time requirement. BART-eligible sources may need to be re-assessed for additional controls in future implementation periods under the CAA's reasonable progress provisions. States should treat BART-eligible sources the same as other reasonable progress sources going forward. *See* 81 FR 26942, 26947 (May 4, 2016).

2. Summary of BART Sources in North Carolina

In the State's December 17, 2007, regional haze plan for the first implementation period, North Carolina identified 17 BART-eligible sources (six electric generating units (EGUs) and eleven non-EGUs) in the State. The non-EGUs submitted BART-exemption modeling demonstrations for NO_x, SO₂, and particulate matter (PM) as applicable to individual facilities. Nine of the 11 non-EGU sources demonstrated that they are not subject to BART by modeling less than the State's BART-exemption visibility impact threshold of 0.5 deciviews. The EGUs relied on the Clean Air Interstate Rule (CAIR)⁹ as a BART alternative for NO_x and SO₂ and submitted BART-exemption modeling demonstrations for PM. All of the EGUs demonstrated that they are not subject to BART for PM by modeling less than the State's BART-exemption threshold. *See* 77 FR 11858, 11874 (February 28, 2012).

North Carolina found that two non-EGUs (Blue Ridge Paper and PCS Phosphate) had modeled visibility impacts greater than the State's 0.5 deciview BART contribution threshold. Therefore, these two facilities were found subject to BART and submitted State permit

⁹ CAIR created regional cap-and-trade programs to reduce SO₂ and NO_x emissions in 28 eastern states (and the District of Columbia), including North Carolina, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone national ambient air quality standards (NAAQS) or the 1997 PM_{2.5} NAAQS. CAIR is no longer in effect and has since been replaced by the Cross-State Air Pollution Rule (CSAPR). CSAPR requires substantial reductions of SO₂ and NO_x emissions from EGUs in 27 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 PM_{2.5} and ozone NAAQS, 2006 PM_{2.5} NAAQS, and the 2008 8-hour ozone NAAQS. As discussed in Section II.B, below, EPA subsequently approved North Carolina's reliance on its Clean Smokestacks Act as a BART alternative in lieu of CAIR. *See* 81 FR 32652 (May 24, 2016).

applications including their proposed BART determinations. PCS Phosphate subsequently shut down its two sulfuric acid units subject to BART and these units were not further evaluated. For Blue Ridge Paper, North Carolina determined and EPA agreed that BART for the subject-to-BART units (two recovery furnaces, their associated smelt dissolving tanks, and the black liquor oxidation system) is the existing emissions control systems in place at the time of that determination. *See* 77 FR at 11874-75.

II. Summary and EPA's Evaluation of North Carolina's SIP Revision

A. Summary of North Carolina's SIP Revision

Through a letter dated April 13, 2021, and submitted to EPA on April 14, 2021, North Carolina submitted a SIP revision to modify its SIP-approved rule at 15A North Carolina Administrative Code (NCAC) 02D .0543, *Best Available Retrofit Technology* (NC BART Rule), which applies to BART-eligible sources. EPA incorporated this rule into North Carolina's SIP as part of EPA's limited approval action on the State's regional haze plan for the first implementation period. *See* 77 FR 38185 (June 27, 2012).

The proposed revisions to the NC BART Rule include the following changes. The submission removes 15A NCAC 02D .0543(g) because it is outdated, requiring the submission of BART permit applications by September 1, 2006. The submission also removes 15A NCAC 02D .0543(i) which required owners or operators of BART-eligible sources required to adopt BART controls in North Carolina to have installed and begun operation of the BART controls by December 31, 2012. The revision also renumbers .0543(h) to .0543(g) and removes the statement that EGUs covered under and complying with 15A NCAC 02D .2400, *Clean Air Interstate Rules*, are considered to be in compliance with the BART requirements for NO_x and SO₂ under the NC BART Rule. Additionally, the revisions update the provisions for accessing EPA's *Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power*

Plants and Other Existing Stationary Facilities in a renumbered provision under 15A NCAC 02D .0543(h) (formerly provision (j)). The submission also includes non-substantive punctuation and wording changes.

B. EPA's Evaluation of North Carolina's SIP Revision

1. NC BART Rule Revisions

North Carolina elected to adopt the NC BART Rule to establish BART requirements in response to federal requirements that states address BART in their initial regional haze SIPs. The CAA and RHR do not require states to develop state BART rules for incorporation into their SIPs. Thus, changes to the NC BART Rule are approvable as long as North Carolina continues to implement and enforce BART and the changes are otherwise consistent with federal BART requirements. EPA proposes to find that the rule changes are approvable for the reasons discussed below.

Regarding the removal of provisions under 15A NCAC 02D .0543, EPA preliminarily agrees that provisions (g) and (i) can be removed because the State-established due dates of September 1, 2006, and December 31, 2012, for submission of BART permit applications and installation and operation of BART, respectively, have since passed and all subject sources have met those requirements. Furthermore, the rule continues to require the owner or operator of a BART-subject emissions unit to install, operate, and maintain BART as approved by the State after BART is incorporated into the unit's permit under 15A NCAC 02Q. *See* 15A NCAC 02D .0543(f).

EPA preliminarily concurs with the removal of the reference to 15A NCAC 02D .2400, *Clean Air Interstate Rules*, as a means to satisfy BART for SO₂ and NO_x for covered EGUs in North Carolina because EPA approved a SIP revision on October 31, 2014, allowing the State to

rely on its Clean Smokestacks Act as an alternative to BART to satisfy BART requirements for BART-eligible EGUs formerly subject to CAIR. *See* 81 FR 32652 (May 24, 2016).¹⁰

EPA preliminarily concurs with the remainder of the changes to the rule because they are editorial revisions that do not alter the substance of the NC BART Rule.

For the reasons described above, EPA preliminarily concludes that the NC BART Rule changes do not alter the State's authority and ability to continue to implement and enforce BART in North Carolina, are consistent with federal BART requirements, and do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement.¹¹

2. Federal Land Manager (FLM) Review

In accordance with 40 CFR 51.308(i)(4), Section 11 of the State's December 17, 2007, regional haze SIP contains procedures for continuing consultation between the State and FLMs on the implementation of the State's visibility protection program. North Carolina provided the SIP revision to the FLMs to review pursuant to the State's regional haze SIP and 40 CFR 51.308(i)(2), and the FLMs have not provided any comments.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference North Carolina rule 15A NCAC 02D .0543 entitled "*Best Available Retrofit Technology*," state effective November 1, 2020, which removes outdated provisions and makes minor editorial changes. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this

¹⁰ To view EPA's full analysis of the October 31, 2014, North Carolina SIP revision and additional details regarding the relationship between BART and EPA's transport rules, see the notice of proposed rulemaking at 81 FR 19519 (April 5, 2016).

¹¹ *See* CAA Section 110(l).

preamble for more information).

IV. Proposed Action

EPA proposes to approve the SIP revision containing changes to 15 NCAC 02D .0543 because they are consistent with the BART requirements set forth in the RHR and CAA and the applicable requirements in CAA section 110.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 19, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

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